

ESTTA Tracking number: **ESTTA334803**Filing date: **03/01/2010**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Petition for Cancellation**

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Wonderbread 5		
Entity	Partnership	Citizenship	California
Composed Of:	Jeffrey Fletcher, John McDill, Thomas Rickard, Christopher Adams, Michael Taylor, and Jay Siegan, each a U.S. Citizen		
Address	c/o of Jay Siegan Presents 1655 Polk Street San Francisco, CA 94109 UNITED STATES		

Attorney information	Meagan McKinley-Ball Phillips, Erlewine & Given LLP 50 California Street 35th Floor San Francisco, CA 94111 UNITED STATES mmb@phillaw.com Phone:415-398-0900
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Registration Subject to Cancellation

Registration No	3691948	Registration date	10/06/2009
Registrant	Patrick Gilles 240 Lovell Avenue 240 Lovell Avenue Mill Valley, CA 94941 UNITED STATES		

Goods/Services Subject to Cancellation

Class 041. First Use: 1996/10/31 First Use In Commerce: 1996/10/31
All goods and services in the class are cancelled, namely: Entertainment services in the nature of live musical performances

Grounds for Cancellation

Deceptiveness	Trademark Act section 2(a)
<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Priority and likelihood of confusion	Trademark Act section 2(d)

Mark Cited by Petitioner as Basis for Cancellation

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	WONDERBREAD 5		
Goods/Services	Entertainment services in the nature of live musical performances		

Attachments	mmb-petition-cancellation-final-w-exhibits.pdf (69 pages)(2364991 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Meagan McKinley-Ball/
Name	Meagan McKinley-Ball
Date	03/01/2010

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE
TRADEMARK TRIAL AND APPEAL BOARD**

In re Registration No. 3691948 for the Word Mark WONDERBREAD 5, registered on October 6, 2009

WONDERBREAD 5,)	
)	
Petitioner,)	Cancellation No. _____
)	
v.)	
)	
PATRICK GILLES,)	
)	
Registrant.)	

PETITION FOR CANCELLATION

Petitioner WONDERBREAD 5, a California general partnership, having a place of business at c/o Jay Siegan Presents, 1655 Polk Street, San Francisco, CA 94109, believes that it is and will continue to be damaged by Registration No. 3691948 and hereby petitions to cancel said registration under the provisions of Section 14 of the Trademark Act of 1946, 15 U.S.C. § 1064 on grounds that the registration was obtained through fraud on the United States Patent and Trademark Office, is likely to be confused with a mark previously used and not abandoned by Petitioner, and that the registrant cannot lawfully use the mark.

To the best of Petitioner's knowledge, the name and address of the current registrant are as follows: Patrick Gilles, 240 Lovell Avenue, Mill Valley, CA 94941.

As grounds for cancellation, Petitioner alleges the following:

1. Petitioner is a decade-plus old musical group named WONDERBREAD 5, based in the San Francisco Bay Area, and comprised of the following members: Jeffrey Fletcher, John McDill, Thomas Rickard, Christopher Adams and Michael Taylor (individually and collectively the “Band”). Since its inception, the Band has operated as a general partnership.

2. On information and belief, Registrant is an individual residing in Mill Valley, CA.

3. Petitioner has performed and continues to perform under the name WONDERBREAD 5 for over ten years, and during that time, has developed a substantial client and fan base. As a result, the Wonderbread 5 name has become well-known in the San Francisco Bay Area and beyond as referring to the Band.

4. For the past 12 years, the Band has maintained the website located at www.wonderbread5.com as a promotional vehicle and a means of keeping its fans updated about future performances and other news concerning the Band.

5. In light of the Band’s continuous use in commerce of the name WONDERBREAD 5 and the fact that it is universally known by that name, the Band is the rightful owner of the WONDERBREAD 5 mark (the “Mark”).

6. The current registrant of the Mark, Patrick Gilles (“Registrant”), is a former member of the Band. Registrant left the Band on or about March 9, 2009. At that time, Registrant ceased to be a member of the Band or the WONDERBREAD 5 general partnership.

7. Three days after he was terminated from the Band, Registrant filed an application for registration of the WONDERBREAD 5 mark in connection with “[e]ntertainment services in the nature of live musical performances.” **Exhibit A.** Registrant filed this application without the knowledge or consent of the Band.

Registrant Releases All Interest in the Band

8. On June 17, 2009, Mr. Gilles filed a Complaint against the Band, its individual members, and its agent and manager in San Francisco Superior Court (the “Lawsuit”). See **Exhibit B.** The Complaint stated various causes of action, all in connection with Registrant’s involvement in and entitlements from his connection with the Band.

9. Nowhere in the 37-page Complaint, did Registrant claim ownership of the WONDERBREAD 5 mark or mention that he had filed an application for the Mark.

10. On September 3, 2009, the defendants in the Lawsuit served Registrant with an Offer to Compromise, pursuant to California Code of Civil Procedure section 998. Section 998 is a California statute that promotes settlement by allowing a party to make an offer to compromise before trial. See **Exhibit C.**

11. Following service of that Offer, counsel for the Bank informed counsel for Registrant, in writing, that the Offer constituted “the [B]and’s offer to pay for your client’s ‘interest’ in the [B]and.” See **Exhibit D.**

12. On October 1, 2009, Registrant accepted the Band’s offer. See **Exhibit E.** The Band remitted payment to Registrant on October 8, 2009, and Registrant dismissed his Complaint, with prejudice, on October 22, 2009. See **Exhibit F.** As such, Mr. Gilles released all claims in and to the Band, including the name WONDERBREAD 5.

Registrant's Wrongful Use of the Mark

13. Despite that Registrant has released, in exchange for monetary compensation, all claims in and to the Band, Registrant attempts to claim ownership of, and derive rights from, the Band's mark and trade name.

14. During the course of the above-described litigation, Registrant never disclosed that he had filed an application for the WONDERBREAD 5 mark.

15. Following settlement of the litigation, the Band members discovered that Registrant had registered the domain name www.thewonderbread5.com. The website contains a single page, containing a photograph of Registrant beneath the caption "Get ready to fall in love all over again! Bigger, Faster, Louder, Nicer" and a photograph of the trademark certificate at issue here along with a photograph of Registrant performing as a member of the Band. See **Exhibit G**. It appears that the domain name was registered in April 2009.

16. Also following settlement of the litigation, the Band members discovered that Registrant had also created a new MySpace page under the name "thewonderbread5." The Band has operated a MySpace page under the name "wonderbread5" for approximately five years.

17. Following Registrant's creation of the above sites, the Band received many calls and emails from fans and clients inquiring as to why Registrant appeared to be operating under the Wonderbread5 name.

Registrant's Fraudulent Procurement of the Mark

18. In his trademark application, Registrant declared, under penalty of perjury, that "no other person, firm corporation or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used

on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive.” Exhibit A.

19. At the time of his filing, Registrant clearly knew that the term “WONDERBREAD 5” had previously been used, and was continuing to be used, by the Band.

20. On information and belief, at the time of his filing of the trademark application, Registrant knew that members of the general public encountering the Mark in connection with musical performances understood the Mark to identify the Band.

21. On information and belief, Registrant misrepresented the nature of his use in commerce of the Mark and misrepresented his rights to the Mark at the time he submitted his Application and continued to prosecute the trademark application leading to the registration that is the subject of this petition.

22. On information and belief, the aforementioned false statements were made with the intent to induce authorized agents of the USPTO to grant said registration, and reasonably relying on the truth of said false statements, the USPTO, did, in fact, grant said registration to Registrant.

23. Petitioner believes that it has been and will continue to be damaged by Registrant’s registration of the Mark.

24. In view of the above-listed statements, Registrant is not entitled to Registration No. 3691948 because Registrant, upon information and belief, committed fraud in the procurement of the subject registration, has released all interest in the Band and therefore cannot lawfully use the Mark and because Petitioner has previously used and not abandoned the same mark.

WHEREFORE, Petitioner respectfully requests that Registration No. 3691948 be cancelled.

Respectfully submitted,

WONDERBREAD 5

Dated: March 1, 2010

PHILLIPS, ERLEWINE & GIVEN LLP

By: /Meagan McKinley-Ball/

David M. Given

Meagan McKinley Ball

50 California Street, 35th Floor

San Francisco, CA 94111

Telephone: (415) 398-0900

Fascimile: (415) 398-0911

Email: dmg@phillaw.com

mmb@phillaw.com

Attorneys for Petitioner

CERTIFICATE OF SERVICE

I, Meagan McKinley-Ball, Esq. Certify that on this 26th day of February, 2010, a true and correct copy of the foregoing document was filed with the Trademark Trial and Appeal Board via the Electronic System for Trademark Trials and Appeals and was sent by U.S. Mail to:

Patrick Gilles
240 Lovell Avenue
Mill Valley, CA 94941

Douglas B. Wroan, Esq.
5155 West Rosecrans Avenue, Ste. 229
Los Angeles, CA 90250

Dated: March 1, 2010

PHILLIPS, ERLEWINE & GIVEN LLP

By: /Meagan McKinley-Ball/
David M. Given
Meagan McKinley Ball
50 California Street, 35th Floor
San Francisco, CA 94111
Telephone: (415) 398-0900
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mmb@phillaw.com
Attorneys for Petitioner

EXHIBIT A

Document Description: **Application**
Mail / Create Date: **12-Mar-2009**

[Previous Page](#)[Next Page](#)You are currently on page **1** of **3**

PTO Form 1478 (Rev 9/2006)

OMB No. 0651-0009 (Exp 12/31/2008)

Trademark/Service Mark Application, Principal Register

Serial Number: **77689156**Filing Date: **03/12/2009**

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	77689156
MARK INFORMATION	
*MARK	Wonderbread 5
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	Wonderbread 5
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font, style, size, or color.
REGISTER	Principal
APPLICANT INFORMATION	
*OWNER OF MARK	Patrick Gilles
DBA/AKA/TA/Formerly	AKA Wonderbread 5 and/or Wonderbread Five
*STREET	240 Lovell Avenue
INTERNAL ADDRESS	240 Lovell Avenue
*CITY	Mill Valley
*STATE (Required for U.S. applicants)	California
*COUNTRY	United States

*ZIP/POSTAL CODE (Required for U.S. applicants only)	94941
PHONE	415 827 0405
FAX	415 380 1983
EMAIL ADDRESS	patrickgilles@yahoo.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
LEGAL ENTITY INFORMATION	
TYPE	individual
COUNTRY OF CITIZENSHIP	United States
GOODS AND/OR SERVICES AND BASIS INFORMATION	
*INTERNATIONAL CLASS	041
*IDENTIFICATION	Entertainment services in the nature of live musical performances
FILING BASIS	SECTION 1(a)
FIRST USE ANYWHERE DATE	At least as early as 10/31/1996
FIRST USE IN COMMERCE DATE	At least as early as 10/31/1996
SPECIMEN FILE NAME(S)	\\TICRS\EXPORT6\IMAGEOUT6 \\776\891\77689156\xml\1\AP P0003.JPG
SPECIMEN DESCRIPTION	Simple name of musical group. The "name" takes many shapes, colors, textures and styles, but spelling remains constant. We are primarily seeking the name spelled in this unique sequence.
CORRESPONDENCE INFORMATION	
NAME	Patrick Gilles
FIRM NAME	dba Wonderbread 5
STREET	240 Lovell Avenue
INTERNAL ADDRESS	240 Lovell Avenue
CITY	Mill Valley
STATE	California
COUNTRY	United States
ZIP/POSTAL CODE	94941

PHONE	415 827 0405
FAX	415 380 1983
EMAIL ADDRESS	patrickgilles@yahoo.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
FEE INFORMATION	
NUMBER OF CLASSES	1
FEE PER CLASS	325
*TOTAL FEE DUE	325
*TOTAL FEE PAID	325
SIGNATURE INFORMATION	
SIGNATURE	/patrick gilles/
SIGNATORY'S NAME	Patrick Gilles
SIGNATORY'S POSITION	Founding member
DATE SIGNED	03/12/2009

PTO Form 1478 (Rev 9/2006)
OMB No. 0651-0009 (Exp 12/31/2008)

Trademark/Service Mark Application, Principal Register**Serial Number: 77689156****Filing Date: 03/12/2009****To the Commissioner for Trademarks:****MARK:** Wonderbread 5 (Standard Characters, see mark)

The literal element of the mark consists of Wonderbread 5.

The mark consists of standard characters, without claim to any particular font, style, size, or color.

The applicant, Patrick Gilles, AKA Wonderbread 5 and/or Wonderbread Five, a citizen of United States, having an address of
240 Lovell Avenue,
240 Lovell Avenue
Mill Valley, California 94941
United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

For specific filing basis information for each item, you must view the display within the Input Table.

International Class 041: Entertainment services in the nature of live musical performances

Use in Commerce: The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, or the applicant's predecessor in interest used the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended.

In International Class _____, the mark was first used at least as early as _____, and first used in commerce at least as early as _____, and is now in use in such commerce. The applicant will submit one specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or services, .

Correspondence Information: Patrick Gilles

dba Wonderbread 5
240 Lovell Avenue
240 Lovell Avenue
Mill Valley, California 94941
415 827 0405(phone)
415 380 1983(fax)
patrickgilles@yahoo.com (authorized)

A fee payment in the amount of \$325 has been submitted with the application, representing payment for 1 class(es).

Declaration

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /patrick gilles/ Date Signed: 03/12/2009

Signatory's Name: Patrick Gilles

Signatory's Position: Founding member

RAM Sale Number: 7707

RAM Accounting Date: 03/12/2009

Serial Number: 77689156
Internet Transmission Date: Thu Mar 12 10:44:32 EDT 2009
TEAS Stamp: USPTO/BAS-76.126.198.240-200903121044320
89443-77689156-40082274d2e5b147bcd124411
6f5de4bebe-CC-7707-20090312101502409587

TDR Home

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- **Technical help:** For instructions on how to use TDR, or help in resolving **technical** glitches, please e-mail TDR@uspto.gov. If outside of the normal business hours of the USPTO, please e-mail [Electronic Business Support](#), or call 1-800-786-9199.
- **Questions about USPTO programs:** Please e-mail [USPTO Contact Center \(UCC\)](#).

NOTE: Within any e-mail, please include your telephone number so we can talk to you directly, if necessary. Also, include the relevant serial number or registration number, if existing.

EXHIBIT B

ORIGINAL

DOUGLAS B. WROAN (Bar No. 177051)
The Wroan Law Firm, Inc.
A Professional Law Corporation
5155 West Rosecrans Avenue, Suite 229
Los Angeles, CA 90250
Telephone 310-973-4291
Facsimile 310-973-4287

SUMMONS ISSUED
FILED
San Francisco County Superior Court

JUN 17 2009

GORDON PARK-LI, Clerk

Attorney for Plaintiff, Patrick Gilles BY: Elise Bitt
Deputy Clerk

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN FRANCISCO

PATRICK GILLES, an individual, on
behalf of himself,

Plaintiff,

vs.

JEFFREY FLETCHER, an individual;
JOHN MCDILL, an individual; THOMAS
RICKARD, an individual;
CHRISTOPHER ADAMS, an individual;
MICHAEL TAYLOR, an individual; JAY
SIEGAN, an individual; JAY SIEGAN
PRESENTS, an unknown business
entity; and WONDERBREAD 5, a
California general partnership;
and DOES 1-10, inclusive,

Defendants.

Case No. **CGC-09-489573**

COMPLAINT FOR DAMAGES AND
EQUITABLE RELIEF:

1. CONSTRUCTIVE FRAUD (CA
CIV. CODE 1573)
2. BREACH OF CONTRACT
3. BREACH OF IMPLIED
COVENANT OF GOOD FAITH
AND FAIR DEALING
4. INTENTIONAL
INTERFEARENCE WITH
PROSPECTIVE ECONOMIC
ADVANTAGE
5. INTENTIONAL INFLICTION
OF EMOTIONAL DISTRESS
6. VIOLATION OF STATUTE
(CA CORPORATIONS CODE
16401) ACTION UNDER
CORPORATIONS CODE 16405
7. VIOLATION OF STATUTE
(CA CORPORATIONS CODE
16403) ACTION UNDER
CORPORATIONS CODE 16405
8. VIOLATION OF STATUTE
(CA CORPORATIONS CODE
16404) ACTION UNDER
CORPORATIONS CODE 16405
9. VIOLATION OF STATUTE
(CA CORPORATIONS CODE
16701) ACTION UNDER
CORPORATIONS CODE 16405
10. VIOLATION OF STATUTE (CA
CIVIL CODE 3344)

CASE MANAGEMENT CONFERENCE SET

NOV 20 2009 - 9^{AM}

DEPARTMENT 212

Plaintiff Patrick Gilles alleges as follows:

COMPLAINT

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1 resident whose current principal place of residence is located
2 at 13535 Wyandotte Street, Valley Glen, CA 91405.

3 7. Plaintiff is informed and believes, and on that basis
4 alleges, that Defendant Christopher Adams ("Adams") is an
5 individual, and at all times herein mentioned was a California
6 resident whose current principal place of residence is located
7 at 93 Elizabeth Way San Rafael, CA 94901.

8 8. Plaintiff is informed and believes, and on that basis
9 alleges, that Defendant Michael Taylor ("Taylor") is an
10 individual, and at all times herein mentioned was a California
11 resident whose current principal place of residence is located
12 at 34 Hawthorne Avenue, San Anselmo, CA 94960.

13 9. Plaintiff is informed and believes, and on that basis
14 alleges, that Defendant Jay Siegan ("Siegan") is an individual,
15 and at all times herein mentioned was a California resident
16 whose current principal place of business is located at 1655
17 Polk Street, Suite 1, San Francisco, CA 94109.

18 10. Plaintiff is informed and believes, and on that basis
19 alleges, that Defendant Jay Siegan Presents ("JSP") is an
20 unknown business entity, that at all times herein mentioned was
21 doing business in California with its principal place of
22 business located at 1655 Polk Street, Suite 1, San Francisco, CA
23 94109.

24 11. Plaintiff is informed and believes, and on that basis
25 alleges, that Defendant Wonderbread 5 ("WB5" or "the Band") is a
26 California General Partnership, either formerly or ostensibly,
27 that was formed in 1996 and that at all times herein mentioned
28 was and is doing business in California and now has its

principal place of business located at 1655 Polk Street, Suite 1, San Francisco, CA 94109. Alternatively, Plaintiff is informed and believes and therefore alleges that Wonderbread 5 ("WB5" or "the Band") is a joint venture with its principal place of business located at 1655 Polk Street, Suite 1, San Francisco, CA 94109.

12. Plaintiff does not know the true names and capacities of those Defendants sued herein as DOES 1 through 10, inclusive, and therefore sue these Defendants by such fictitious names.

Plaintiffs will amend this Complaint to allege their true names and capacities when such are ascertained. Plaintiffs are informed and believe, and on that basis allege, that each of the Defendants sued herein as DOES 1 through 10 inclusive, is in some manner legally responsible for the wrongful acts alleged herein.

13. Plaintiffs are informed and believe, and on that basis allege, that Defendants, and each of them, are and were at all times herein mentioned, the agents, servants, employees, joint venturer's or co-conspirators of each of the other Defendants, and at all times herein mentioned were acting within the course and scope of said agency, employment, or service in furtherance of the joint venture or conspiracy.

1 20. Both Fletcher and Plaintiff put the word out for
2 musicians and both Plaintiff and Fletcher quickly rounded out
3 and formed what would be a new band.

4 21. The original lineup of the Band was Tommy Rickard on
5 drums, John McDill on Bass and vocals, an individual named
6 Stevenson on keyboards, Jeffery Fletcher on lead vocals and
7 Patrick Gilles on guitars and vocals.

8 22. The Bands first rehearsals were at Plaintiff's home in
9 Novato, California where Plaintiff had built a sound proof room
10 in one bay of Plaintiff's garage. This was the "home base" of
11 the band for the following 3-4 years.

12 23. During the first or second group rehearsal, the five
13 members began to discuss possible names for the Band.

14 24. The five members all agreed that they needed to
15 associate themselves with the Jackson 5 somehow, without using
16 the name "Jackson 5". The members were brainstorming and every
17 new suggestion was falling flat. Plaintiff suggested the name,
18 "Cinco de Blanco". Then, Plaintiff suggested, "Jackson de
19 Blanco". Another member brought up the word "Whitebread", then
20 "Whitebread 5". Finally, it was McDill, Plaintiff believes, who
21 suggested "Wonderbread" to replace "Whitebread". Shortly
22 thereafter, the number 5 was appended to "Wonderbread" and the
23 Band members all agreed on the name "Wonderbread 5".

24 25. The Bands first live performance was on a Thursday
25 evening in November 1996 at the same Faultline nightclub in San
26 Rafael. Plaintiff secured this first performance for Wonderbread
27 5 because of Plaintiff's personal relationship with the
28

1 Faultline owners as a result of Plaintiff's previous band's long
2 standing success there.

3 26. For the next year, WB5 performed exclusively as a
4 Jackson 5 tribute band in the Bay Area. The band performed
5 approximately 2-3 shows per month to small, but enthusiastic
6 crowds.

7 27. From the beginning, each member of the band adopted the
8 persona of a corresponding Jackson family member by way of his
9 instrument. That is, the drummer

10 Rickard became "Jackie Jackson", the actual drummer of the
11 actual Jackson 5. The bass player McDill became "Jermaine
12 Jackson". Fletcher became "Michael Jackson". Stevenson became
13 "Marlon Jackson" and Plaintiff became "Tito Jackson", the guitar
14 player. Each member wore an afro wig and the Band modeled their
15 costumes after the early Jackson 5's late sixties and early
16 seventies era costumes.

17 28. The Bands posters highlighted each member's stage-
18 character names and outrageous costumes. The Band began to
19 strategically brand themselves as the "other Jackson 5". It was
20 campy and fun. The live show was self-deprecating in costume,
21 but backed up by well-executed musical performances. Everyone in
22 the Band was an accomplished player and there was a natural
23 chemistry and ease to the performances.

24 29. The Band's first private event performance was on
25 September 6, 1997, in San Rafael, California at Plaintiff's
26 wedding. Plaintiff and his fiancé invited the entire band to the
27 wedding as guests and the Band, in turn, all agreed to perform
28 five songs for Plaintiff's family and friends.

1 30. Around this time, the Band learned of a technique
2 called "backing tracks", wherein, the Band would actually play
3 along with synchronized pre-recorded music and additional vocals
4 to provide a much larger and fuller sound. The Bands success and
5 popularity really seemed to surge after that.

6 31. The Band began to see more and more people coming to
7 the public events and more and more people asking if the Band
8 would ever considering expanding its repertoire to include other
9 disco and current rock hits.

10 32. Plaintiff quickly brought several non-Jackson 5 songs
11 to the Band's set list because of Plaintiff's extensive history
12 of playing cover tunes prior to the formation of WB5.
13 Specifically, the Band's first non-Jackson 5 songs were "Brick
14 House" by the Commodores and "Blister in the Sun" by the Violent
15 Femmes, both of which Plaintiff sang in the Flesh Weapons and
16 subsequently sang lead vocals on in the Wonderbread 5.

17 33. Once the Band realized how well the expanded set list
18 was received, the Wonderbread 5 was no longer an exclusive
19 Jackson 5 tribute band, but rather, an all-inclusive, "no songs
20 barred" cover band with outrageous costumes, backing tracks and
21 identifiable stage personas.

22 34. The Band began to market these unique attributes
23 heavily with flyers, posters, handbills and logo stickers.
24 Plaintiff volunteered and took on the duties of purchasing and
25 coordinating all sticker, button, matchbooks and T-shirt
26 manufacturing.

27 35. Around 1998, the Band had become better known and its
28 popularity was growing exponentially. WB5 were performing in San

1 Francisco several nights a month, grossing \$500 or more per
2 show.

3 36. Stevenson, the keyboard player, regrettably left WB5
4 suddenly to spend more time with his growing family and busy
5 computer career. Fletcher advised the rest of the WB5 that his
6 old band mate and high school friend, Christopher Adams, might
7 make a good addition on keyboards. The members of the Band all
8 agreed and Adams was added as a member of the Band. Adams
9 adopted Stevenson's appointed stage name "Marlon Jackson" and
10 the WB5 continued with little disruption.

11 37. Between 1998 and 2000, the Band began to morph into a
12 "party band" that could play bits and pieces of just about any
13 song that could be shouted out from the audience. It became a
14 part of the show and something the crowd could expect. People
15 would ask for a random song and invariably, one or more of the
16 members of the WB5 could put together a quick version for the
17 appreciative crowd. The members enjoyed this challenge as well
18 as the growing crowds that were drawn by the Band's uniquely
19 interactive act. WB5 was being compared to a wild "heavy metal,
20 disco version of San Francisco's long time show Beach Blanket
21 Babylon".

22 38. The Band began to invite members of the crowd on stage
23 at will. A WB5 show became known as less of an event to witness,
24 but more of an interactive event to join in on. This became
25 another unique and consistent trait of the Band's live show,
26 which has been intentionally fostered and maintained to this
27 day.

28

1 39. In 2000-2001 WB5 began to combine multiple songs into
2 long, extended medleys that would easily go on for eight minutes
3 or more. As the Band perfected this unique art form of morphing
4 multiple songs into rhythms of one song and lyrics of another
5 simultaneously into a new song, the Band's fan base rapidly
6 grew. Soon, the WB5 began to incorporate the backing tracks to
7 the medleys in order to better structure these unique musical
8 pieces, most of which are still being performed today by the
9 WB5. This new style of music, which later became known as "Mash
10 Ups", along with the outfits, persona characters and great
11 execution, became the primary ingredients that set the WB5 apart
12 from all other local cover bands.

13 40. In 2000-2001, the Band's popularity caught the
14 attention of Daniel Swann and Jay Siegan, two local booking
15 agents who dealt primarily with corporate party bands and
16 tribute bands.

17 41. The five band members agreed to meet with Swann and
18 Siegan to discuss a possible business relationship. Swann
19 declined to work with the band, but Siegan offered the band a
20 simple business arrangement. Siegan proposed to take on all
21 event bookings for the Band in return for 1/6th of the net
22 receipts. The five members of the band agreed and began to allow
23 Siegan to handle all bookings for WB5.

24 42. In the beginning of the relationship with Siegan, the
25 Band was typically paid in cash or check made out to a single
26 member, who would then have to deposit the funds in his personal
27 account and distribute additional personal checks to each of the
28 other members.

1 43. This method of payment to members became problematic
2 and Siegan soon took on the duty of collecting all receipts from
3 shows and dispersing the funds out to all members of the WB5
4 equally. In short, Siegan would distribute 1/6th of the pre-tax
5 total net to each member, including Siegan himself. At the end
6 of each calendar year, each member would receive a Form 1099
7 from JSP (Jay Siegan Presents). All check payments received from
8 nightclubs or private clients would be made out to Jay Siegan
9 Presents and deposited into the Jay Siegan Presents Band Trust
10 Account.

11 44. In 2001, Plaintiff, on behalf of the Band, secured the
12 name "Wonderbread5.com LLC" from the California Secretary of
13 State's office. The fees were \$1600 per year, which the Band
14 quickly refused to pay. Plaintiff paid the fees for 2 years and
15 subsequently requested the Secretary of State suspend the LLC
16 filing.

17 45. The Band has always and continues to this day to
18 operate as it had since its inception. Siegan takes all receipts
19 and disperses monies to each member equally with a Form 1099 to
20 follow at the end of each year.

21 46. Also in 2001, the entire group, along with Siegan
22 secured a group bank account under the name "Wonderbread 5" with
23 The Mission Bank in San Francisco, CA. Siegan and Plaintiff were
24 the only two signatures and administrators on the account. All
25 five band members and Siegan agreed to pull 25% of all income
26 paid by check from clients and deposit that money into the "band
27 account" for future expenses and other business ventures.

28

1 47. The Band checking account reached a balance of over
2 \$14,000 within the first year, but was soon closed because of
3 individual members needing additional funds for living expenses,
4 beginning with Rickard who opted out first.

5 48. Between 2002 and 2009, WB5 was booked every Friday and
6 Saturday with little exception. Many times, the Band would play
7 an additional weekday evening as well, totaling 10-15
8 performances per month on average, with gross receipts of
9 approximately \$3500 per show. The Band has grossed an average of
10 \$375,000 per year since 2002. Membership in the band was a full
11 time job and the primary source of income for every person in
12 the Band at one time or another.

13 49. Plaintiff distinctly recalls a congratulatory
14 conversation wherein Siegan announced to the members of the Band
15 on its 10 year anniversary that the Wonderbread 5 had generated
16 net income in excess of one million dollars. This was a very
17 proud and enlightening moment for all of the members of the Band
18 including Plaintiff. The WB5 were one of the few bands that
19 could boast this fact and also the fact that the Band had
20 maintained their original line up since 1997.

21 50. Soon thereafter however, resentment and anger began to
22 creep into the Band because of marital problems, money issues
23 and lack of communication.

24 51. Because of each member's logistical constraints,
25 respective family situations and lack of rehearsals, the Band's
26 marketing machine, song creation and shared outside interests
27 came to a near halt in mid 2006.

28

1 52. Each member of the band was delegated and/or assumed
2 responsibility for running some aspect of the business of the
3 Band. Fletcher performed most of the administrative duties. He
4 voluntarily took on the role of creating and printing posters,
5 updating the mailing lists, maintaining the website, uploading
6 photos from each show to the website and generating graphic
7 design.

8 53. Plaintiff handled the radio advertising including
9 writing the radio copy, and placement of the ads, coordination
10 etc. for the Band. In addition Plaintiff also edited videos from
11 live performances and continued to coordinate the manufacturing
12 of buttons, stickers and apparel. He also continued to produce
13 the buttons, stickers and other related 'swag' for the Band.

14 54. McDill had eased into the role of putting together the
15 backing tracks from his home studio, Rickard acted as the single
16 point of contact to Siegan, Adams managed the website hosting
17 for the Band and often built new pages or added to the website.

18 55. It was McDill's role to generate the crucial backing
19 tracks and he would often utilize his close friend, Michael
20 Philip Taylor, to play guitars on the Wonderbread 5 backing
21 tracks.

22 56. From the outset Plaintiff objected to the use of
23 Taylor's guitar playing on these tracks, because Taylor's
24 playing style was not similar to Plaintiffs and Plaintiff found
25 it difficult to synchronize with Taylor's rhythm style and note
26 selection.

1 57. Plaintiff offered to perform these parts and sternly
2 requested that the Band replace Taylor's parts with Plaintiff's
3 own playing immediately.

4 58. McDill proffered many excuses why this was not
5 possible, but primarily, McDill stated he worked on these tracks
6 late at night with Taylor and it would not be conducive for
7 Plaintiff to be at McDill's home recording studio at such late
8 hours or for McDill to call Plaintiff for these 'impromptu'
9 recording sessions with Taylor.

10 59. Although several of Taylor's performances remain to
11 this day, Plaintiff has since been able to perform most of the
12 backing track guitar parts himself.

13 60. In 2006, the Band remained very popular. WB5 was at its
14 peak of success and ease of operation. Siegan had asked the Band
15 for years to generate a new video, a new website and some new
16 promotional materials to no avail. The Band just could not seem
17 to commit to creating these important assets.

18 61. The tension between members of the Band became so great
19 in 2006 that all the members agreed to seek a professional
20 counselor to help better define each member's role and relieve
21 the assumed resentment between members.

22 62. The outcome of the meeting with the counselor was very
23 positive for all the members. The Band left with a new outlook,
24 and 2006-2009 were without question the most successful and
25 profitable period in the Band's history. The Band was flown to
26 Mexico by Sammy Hagar (lead singer of Van Halen) to perform for
27 2 nights as his private guests in Cabo Wabo. The Band earned an
28 all expense paid vacation and an additional fee of \$10,000 for 2

1 shows. Plaintiff personally booked this weekend for the Band
2 through his relationship with the Hagars.

3 63. The Band also had established a personal and close
4 relationship with San Francisco's #1 morning radio show and were
5 a regular topic of conversation, which brought otherwise
6 unattainable levels of free mass-radio promotion. 600,000
7 listeners would repeatedly hear about how great WB5 was on a
8 regular basis. The Band also performed for the morning show many
9 times as live musical guests.

10 64. Local celebrities would regularly attend the WB5 shows
11 and often perform on stage with the Band. The Band was a long-
12 standing institution in the Bay Area and abroad with shows
13 booked out a year in advance. WB5 had performed in over 12
14 states and 3 foreign countries with private engagements booked
15 for Mexico, Puerto Rico and Canada.

16 65. The Band would learn new songs by emailing music files
17 and instructions to one another and then work independently from
18 home in preparation for the performance. This system has become
19 the standard practice and has not changed since Rickard's move
20 to Los Angeles in 2006. The Band would rehearse approximately 8-
21 12 times per year between 2005 and 2009.

22 66. Finally, in early 2009, WB5 created a new promotional
23 video and an accompanying website. Siegan was ecstatic. The Band
24 was re-invigorated.

25 67. Unfortunately, Plaintiff was not aware that the other
26 members of the Band and Siegan were conspiring to replace
27 Plaintiff with Taylor.

28

68. Taylor is very proficient on guitar, drums, keyboards, bass guitar and could sing back up vocals adequately. Taylor has, at one time or another, substituted for every member of the Band on live performances, on their respective instrument except for lead vocals.

69. The first time Fletcher was forced to miss a performance, WB5 secured Taylor to play guitar and Plaintiff sang lead vocals in place of Fletcher. Plaintiff typically sings lead vocals on 30%-40% of all WB5 songs on any given night in any event and Plaintiff himself had used Taylor as a substitute on a prior occasion. Since that time Fletcher has secured other viable substitutes, which has allowed Plaintiff to stay on guitar and vocals.

70. Plaintiff continued to utilize the services of Taylor as a substitute on occasion but in early 2007 Plaintiff stopped using Taylor because of Taylor's sudden changing financial demands. Plaintiff had regularly paid Taylor \$350 per performance but Taylor began to demand Plaintiff's entire net receipts regardless of the amount.

71. Siegan and the members of the Band supported Taylor's request and Plaintiff became alone in his opinion that Taylor had not "built the band's success" and was merely a substitute and should be paid fairly and accordingly.

72. It became obvious that Siegan and the members of the Band were hoping to admit Taylor as a full member of the Band with full pay and wanted to cast Plaintiff aside. Instead, Plaintiff declined Taylor's new financial demands and Plaintiff found two new substitute guitar players, Jon Axtell and Clay

1 Bell, both of who are very accomplished, perform regularly in
2 other cover bands and are well received by the fans, but they
3 were not the primary choice of the Band.

4 73. The other four members of the Band were not pleased
5 with Plaintiff's decision to no longer utilize Taylor after
6 2007. They still preferred Taylor and expressed their
7 disappointment with Plaintiff for not simply paying Taylor
8 whatever he wanted.

9 74. There was friction in the Band between all the members
10 on different occasions and for different reasons, but all issues
11 seemed to work themselves out over time. After all, the Band was
12 not shrinking, but rather maintaining a high volume of work. At
13 no time did the Band ever lose a show or lose money due to
14 personal problems between the members or a substitute player.

15 75. Only one time has a single band member ever missed a
16 show or forgotten about an engagement. It happened in 2008, when
17 Adams, the keyboard player, forgot about a Wednesday evening
18 private event in Sonoma. Adams missed the entire first 60 minute
19 set. Each member of the Band began to call Adams's friends to
20 find out if he was okay. Turns out, Adams had simply forgotten
21 about the show and had gone on a motorcycle ride. The Band
22 covered the parts and basically laughed it off as a "funny
23 story" to talk about in later years.

24 76. There was no punishment or compensation demanded or
25 offered for this breach. In fact, there has never been a
26 punishment, garnishment or exclusion of any member in the entire
27 history of the Band until March 10, 2009.

28

1 77. On Tuesday March 10, 2009, Plaintiff received a
2 telephone message at Plaintiff's home from Adams advising
3 Plaintiff to call Adams back.

4 78. That same evening Plaintiff telephoned Adams back.
5 Adams advised Plaintiff that: "We all decided, you're out of the
6 Band". Adams further advised Plaintiff not to attend the show
7 scheduled for the following evening, Wednesday, March 11, 2009,
8 in Sacramento, California.

9 79. Plaintiff told Adams that the Band could not just
10 unilaterally decide to remove Plaintiff from the Band and that
11 Plaintiff would indeed attend and planned to perform at the show
12 the next evening. Adams advised Plaintiff not to come to the
13 show because they would not let him play and that "it could get
14 physical" then he hung up the phone and the call ended.

15 80. Subsequent to that conversation, that same evening,
16 Plaintiff telephoned Siegan to discuss the matter. Siegan acted
17 surprised as if he was not aware the Band was contemplating such
18 a move. Siegan advised Plaintiff not to worry.

19 81. Plaintiff also telephoned Rickard that night and
20 Rickard also advised Plaintiff not to attend the show in
21 Sacramento.

22 82. The following night, Taylor was miraculously booked for
23 the evening's engagement on Wednesday March 11, 2009. Taylor did
24 perform 3 one hour sets (180 minutes of music). This feat would
25 be virtually impossible without a serious and committed level of
26 preparation and rehearsal.

27
28

83. Taylor had been informed of Plaintiffs wrongful exclusion well before Plaintiff was notified by Adams on March 10th.

84. In fact, WB5 had been rehearsing with Taylor prior to Plaintiffs notification of Plaintiffs ouster with the full intent of a seamless, clandestine and immediate replacement without Plaintiff's knowledge or consent.

85. On Thursday March 12, 2009, Plaintiff received an email letter from Barry Simons, a lawyer, on behalf of the members of the Band advising Plaintiff that Plaintiff was no longer a member of the Band and that the Band, "...shall continue to perform and conduct business under the name 'Wonderbread 5' and that Plaintiff [sic] shall relinquish all rights in the partnership business and shall no longer be entitled to any and all future proceeds from Artists' live performance engagements and any other business activities." A true and correct copy of the email letter is attached hereto and labeled as Exhibit A.

86. On or about March 14, 2009 Plaintiff received a check in the amount of \$5,000.00 from Siegan marked "Wonderbar [sic] 5 final Payment".

87. Plaintiff advised Siegan that he would not cash the check because of the final payment notation and on or about March 17, 2009 Siegan reissued another check to Plaintiff in the amount of \$5,000.00.

88. Subsequent to March 10, 2009 Plaintiff attempted to resolve Plaintiffs wrongful disassociation from the Band peacefully but was unsuccessful.

1 89. Since Plaintiff's wrongful disassociation and exclusion
2 from the Band and without Plaintiffs consent, Defendants, and
3 each of them, continue to use Plaintiff's photo and likeness (as
4 well as Plaintiff's voice and guitar tracks) in Defendants live
5 performances, website (www.wonderbread5.com), marketing and mass
6 email notices.

7 90. Plaintiff was ultimately forced to retain counsel to
8 protect Plaintiffs interest in the partnership business of the
9 Band.

10 91. Plaintiff, through counsel, issued two demands to WB5
11 and its individual partners, the first on March 30, 2009 and the
12 second on April 20, 2009 for an accounting and copies of the
13 books and records of the partnership business pursuant to
14 California Corporations Code 16403(b) and requesting a buyout
15 under 16701. Both demands were met with hostility and refused by
16 the Band.

17 92. The Band continues to operate as a profitable business
18 and since March 10, 2009 Taylor has become a full time member of
19 the Band while Plaintiff remains wrongfully excluded and
20 disassociated from the business.

21
22 FIRST CLAIM FOR RELIEF - CONSTRUCTIVE FRAUD
23 California Civil Code Section 1573
24 (Against All Defendants)

25 93. Plaintiff realleges and incorporates by reference
26 herein each of the facts and allegations in Paragraphs 1 through
27 92 above inclusive, as though fully set forth herein.

28 94. By virtue of the relationship between Plaintiff and
these Defendants, and Does 1-10, and each of them, a fiduciary

1 duty existed because Defendants were acting in their capacity as
2 partners, co-joint venturer's, managers, financial advisor and
3 confidants for and with Plaintiff.

4 95. Pursuant to said duty, Defendants owed duties of the
5 utmost good faith, fairness and full disclosure to Plaintiffs in
6 all matters pertaining to the business and management concerning
7 the Band, Wonderbread 5.

8 96. Defendants breached their fiduciary duty to Plaintiff,
9 as alleged above, and in so doing gained an advantage over
10 Plaintiff. In particular, in breach of their fiduciary duty,
11 Defendants, among other things, conspired to and did in fact,
12 unjustly remove, exclude and disassociate Plaintiff from
13 Plaintiffs further participation in the business of the Band
14 which allowed Defendants to earn excessive or greater income or
15 profits and/or which deprived Plaintiff of Plaintiffs rightful
16 share in the income and/or profits of the Band. If Defendants
17 had disclosed to Plaintiff that Defendants were planning to
18 remove, exclude and disassociate Plaintiff from the Band to
19 Plaintiffs' financial detriment, Plaintiff would not have agreed
20 or accepted the disassociation.

21 97. Defendants realized a profit from the practice of fraud
22 as alleged and, accordingly, Defendants, and each of them, is
23 required to disgorge their profits resulting from the fraud and
24 Plaintiff is entitled to an award in the amount of these profits
25 and interest on all such sums from the date of injury in
26 addition to punitive damages.

1 SECOND CLAIM FOR RELIEF - BREACH OF CONTRACT
2 (Against Defendants Fletcher, McDill, Rickard, Adams, Siegan,
3 JSP and WB5)

4 98. Plaintiff realleges and incorporates by reference
5 herein each of the facts and allegations in Paragraphs 1 through
6 97 above, inclusive, as though fully set forth herein.

7 99. Defendants and Does 1-10, and each of them, agreed and
8 operated a partnership business as a live performance band for
9 nearly 13 years. At all times during the existence and operation
10 of the partnership business; the partners equally distributed
11 fee income amongst themselves and their manager in consideration
12 for each partners, or members, services to the partnership
13 business.

14 100. Plaintiff has duly performed all of its covenants and
15 conditions on his part to be performed under the partnership
16 agreement with Defendants, except as Plaintiffs performance was
17 prevented or excused by Defendants conduct.

18 101. Defendants breached the agreement with Plaintiff by
19 wrongfully and unjustly excluding and disassociating Plaintiff
20 from the partnership business in violation of the law.

21 102. As a direct and proximate result of the breach by
22 Defendants, Plaintiff has suffered damages in an amount
23 according to proof at trial but in an amount not less than
24 \$1,000,000.00.

25 THIRD CLAIM FOR RELIEF - BREACH OF IMPLIED COVENANT OF GOOD
26 FAITH AND FAIR DEALING

27 (Against Defendants Fletcher, McDill, Rickard, Adams, Siegan,
28 JSP and WB5)

1 103. Plaintiff realleges and incorporates by reference
2 herein each of the facts and allegations in Paragraphs 1 through
3 102 above, inclusive, as though fully set forth herein.

4 104. Defendants and Does 1-10, and each of them, agreed and
5 operated a partnership business as a live performance band for
6 nearly 13 years. At all times during the existence and operation
7 of the partnership business; the partners equally distributed
8 fee income amongst themselves and their manager in consideration
9 for each partners, or members, services to the partnership
10 business.

11 105. Defendants intentionally misled Plaintiff about
12 Defendants intent with respect to Plaintiff and Plaintiffs
13 status as a member or partner of the Band and business.

14 106. Defendants wrongfully and unjustly excluded and
15 disassociated Plaintiff from the partnership business in
16 violation of the law on or about March 10, 2009.

17 107. The conduct of Defendants, as aforesaid, breached the
18 implied covenant of good faith and fair dealing.

19 108. As a direct and proximate result of the breach by
20 Defendants, Plaintiff has suffered damages in an amount
21 according to proof at trial but in an amount not less than
22 \$1,000,000.00.

23 FOURTH CLAIM FOR RELIEF - INTENTIONAL INTERFERENCE WITH
24 PROSPECTIVE ECONOMIC ADVANTAGE
(Against All Defendants)

25 109. Plaintiff realleges and incorporates by reference
26 herein each of the facts and allegations in Paragraphs 1 through
27 108 above, inclusive, as though fully set forth herein.
28

1 110. Defendants and Does 1-10, and each of them, knew of
2 Plaintiff's existing agreement and business relationship
3 concerning the Band, Wonderbread 5.

4 111. Despite knowing of the ongoing business relationship,
5 Defendants, and each of them, intentionally interfered with the
6 relationship by conspiring and ultimately wrongfully and
7 unjustly excluding and disassociating Plaintiff from the
8 business.

9 112. As a direct and proximate result of Defendants actions
10 and omissions, Plaintiff has been damaged in an amount according
11 to proof due to the loss of income and damage to Plaintiff's
12 professional reputation. Plaintiff has suffered damages in an
13 amount according to proof at trial but in an amount not less
14 than \$1,000,000.00.

15 113. Defendants actions were undertaken with fraud, malice
16 or oppression, or with conscious disregard of the rights of
17 Plaintiff, and, therefore, Plaintiff is entitled to and award of
18 exemplary and punitive damages against Defendants, and each of
19 them, in an amount according to proof and at the courts
20 discretion.

21
22 FIFTH CLAIM FOR RELIEF - INTENTIONAL INFLECTION OF
23 EMOTIONAL DISTRESS
(Against All Defendants)

24 114. Plaintiffs realleges and incorporates by reference
25 herein each of the facts and allegations in Paragraphs 1 through
26 113 above, inclusive, as though fully set forth herein.

27 115. Defendants and Does 1-10, and each of them, by
28 conspiring to interfere and to wrongfully exclude and
disassociate Plaintiff from the partnership business of the

1 Band, engaged in conduct that was and is outrageous and an abuse
2 of the fiduciary relationship with Plaintiff.

3 116. As a result of the conduct of Defendants, Plaintiff
4 has sustained sever emotional distress, mental anguish and
5 feelings of helplessness and desperation over the loss of
6 income, sense of self worth and Plaintiff's ability to support
7 his family.

8 117. Defendants intentionally caused the injury to
9 Plaintiff and were substantially certain that Plaintiff would be
10 injured as a result of Defendant's conduct.

11 118. By reason of the foregoing, Plaintiff has been
12 required to seek the help of professional services for financial
13 hardship.

14 119. As a direct and proximate result of the intentional,
15 malicious, harmful unlawful and offensive acts of Defendants,
16 Plaintiff sustained severe and serious injury to their persons,
17 including but not limited to severe emotional distress all to
18 Plaintiff's severe injury and damages in a sum according to
19 proof at trial.

20
21 SIXTH CLAIM FOR RELIEF - VIOLATION OF STATUE
22 California Corporation Code Section 16401
23 (Against Defendant(s) Fletcher, McDill, Rickard, Adams, Taylor,
Siegman, JSP and WB5)

24 120. Plaintiff realleges and incorporates by reference
25 herein each of the facts and allegations in Paragraphs 1 through
26 119 above, inclusive, as though fully set forth herein.

27 121. Defendants and each of them with Plaintiff are
28 partners, members or fiduciary's of the partnership business
commonly known as the Wonderbread 5.

1 122. Defendants and each of them violated California
2 Corporations Code Section 16401 because they: 1) wrongfully
3 excluded and disassociated Plaintiff from the partnership
4 business thereby depriving Plaintiff of Plaintiff's equal share
5 of the partnership profits; 2) denied Plaintiff equal right to
6 the management and conduct of the partnership business; 3)
7 wrongly admitted a new member to the partnership business
8 without the consent of Plaintiff and 4) engaged in an act(s)
9 outside the ordinary course of business without the consent of
10 Plaintiff.

11 123. As a direct and proximate result of the statutory
12 violations, Plaintiff has suffered and will continue to suffer
13 severe injury and damages, costs and expenses in an amount
14 according to proof but in an amount not less than \$1,000,000.00.

15
16 SEVENTH CLAIM FOR RELIEF - VIOLATION OF STATUE
17 California Corporation Code Section 16403
18 (Against Defendant(s) Fletcher, McDill, Rickard, Adams, Taylor,
19 Siegan, JSP and WB5)

20 124. Plaintiff realleges and incorporates by reference
21 herein each of the facts and allegations in Paragraphs 1 through
22 123 above, inclusive, as though fully set forth herein.

23 125. Defendants and each of them with Plaintiff are
24 partners, members or fiduciary's of the partnership business
25 commonly known as the Wonderbread 5.

26 126. Defendants and each of them violated California
27 Corporations Code Section 16403 because they wrongfully denied
28 Plaintiff access to the books and records of the partnership
business as well as any and all information concerning the
partnership business and affairs.

1 127. As a direct and proximate result of the statutory
2 violations, Plaintiff has been forced retain counsel to bring
3 this action to enforce Plaintiffs rights under the statue and
4 has suffered and will continue to suffer severe injury and
5 damages, costs and expenses in an amount according to proof
6 trial but in an amount not less than \$1,000,000.00.

7
8 EIGHTH CLAIM FOR RELIEF - VIOLATION OF STATUE
9 California Corporation Code Section 16404
10 (Against Defendant(s) Fletcher, McDill, Rickard, Adams, Taylor,
Siegman, JSP and WB5)

11 128. Plaintiff realleges and incorporates by reference
12 herein each of the facts and allegations in Paragraphs 1 through
13 127 above, inclusive, as though fully set forth herein.

14 129. Defendants and each of them with Plaintiff are
15 partners, members or fiduciary's of the partnership business
16 commonly known as the Wonderbread 5.

17 130. Defendants and each of them violated California
18 Corporations Code Section 16404 because they: 1) breached the
19 duty of loyalty and care owed to Plaintiff; 2) wrongfully failed
20 to account to Plaintiff for any property, profit or benefit
21 derived from the partnership business; 3) failed to discharge
22 the duties owed to Plaintiff with good faith and in fair
23 dealing.

24 131. As a direct and proximate result of the statutory
25 violations, Plaintiff has been forced retain counsel to bring
26 this action to enforce Plaintiffs rights under the statue and
27 has suffered and will continue to suffer severe injury and
28 damages, costs and expenses in an amount according to proof
trial but in an amount not less than \$1,000,000.00.

1
2 NINTH CLAIM FOR RELIEF - VIOLATION OF STATUE
3 California Corporation Code Section 16701
4 (Against Defendant(s) Fletcher, McDill, Rickard, Adams, Taylor,
Siegan, JSP and WB5)

5 132. Plaintiff realleges and incorporates by reference
6 herein each of the facts and allegations in Paragraphs 1 through
7 131 above, inclusive, as though fully set forth herein.

8 133. Defendants and each of them with Plaintiff are
9 partners, members or fiduciary's of the partnership business
10 commonly known as the Wonderbread 5.

11 134. Defendants and each of them violated California
12 Corporations Code Section 16701 because they wrongfully excluded
13 and disassociated Plaintiff from the partnership business with
14 purchasing the Plaintiffs' partnership interest pursuant to the
15 provisions of the code section.

16 135. Plaintiff, through his counsel, made an appropriate
17 demand upon Defendants, in writing, to comply with the provision
18 of 16701, however Defendants flatly refused to comply.

19 136. As a direct and proximate result of the statutory
20 violation, Plaintiff has been forced retain counsel to bring
21 this action to enforce Plaintiffs rights under the statue and
22 has suffered and will continue to suffer severe injury and
23 damages, costs and expenses in an amount according to proof
24 trial but in an amount not less than \$1,000,000.00.

TENTH CLAIM FOR RELIEF - VIOLATION OF STATUE
California Civil Code Section 3344
(Against All Defendants)

137. Plaintiff realleges and incorporates by reference herein each of the facts and allegations in Paragraphs 1 through 136 above, inclusive, as though fully set forth herein.

138. Defendants and Does 1-10, and each of them, Defendants, continue to use Plaintiff's photo and likeness (as well as Plaintiff's voice and guitar tracks) in Defendants live performances, website marketing and mass email notices.

139. The continued use of Plaintiffs name, voice and likeness in association with Defendants live performances, website, marketing and mass email notices is without the consent of Plaintiff.

140. As a direct and proximate result of the statutory violation, Plaintiff has been forced retain counsel to bring this action to enforce Plaintiffs rights under the statue and has suffered and will continue to suffer severe injury and damages, costs and expenses in an amount according to proof trial but in an amount not less than \$750.00.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment and relief against each of the Defendants as follows:

A. On the First Cause of Action

1. For general and compensatory damages pursuant to Cal. Civil Code Section 1709 and 1333 and according to proof;
2. For consequential damages pursuant to Cal. Civil Code Section 3343;

3. For punitive damages pursuant to Cal. Civil Code Section 3294(b)(3) and for treble damages pursuant to Cal. Civil Code Section 3345;
4. For the interest provided by law including, but not limited to, Cal. Civil Code Section 3288 & 3291;
5. For an award of damages equal to the profit realized from Defendants conduct, as alleged;
6. For attorney fees under Cal. Corporations Code Section 16701(i);
7. For Plaintiff's pain, suffering and emotional distress as well as for sums incurred for services of hospitals, physicians, nurses and other medical supplies and services, if any;
8. For preliminary and permanent injunctive relief enjoining and restraining Defendants their assignees, delegates and all persons acting in concert with Defendants and each of them from doing any act which would interfere or otherwise injure Plaintiff to his detriment with respect to his interests in the partnership business, as alleged;
9. For costs of suit and for such other and further relief as the court deems proper.

B. On the Second Cause of Action

1. For general and compensatory damages pursuant to Cal. Civil Code Section 3300 and according to proof;

2. For consequential and lost profits damages in amount not less than \$1,000,000.00 and according to proof;
3. For an award of damages equal to the profit realized from Defendants conduct, as alleged;
4. For the interest provided by law including, but not limited to, Cal. Civil Code Section 3289;
5. For attorney fees and costs of suit and for such other and further relief as the court deems proper.

C. On the Third Cause of Action

1. For general and compensatory damages pursuant to Cal. Civil Code Section 3300 and according to proof;
2. For consequential and lost profits damages in amount not less than \$1,000,000.00 and according to proof;
3. For the interest provided by law including, but not limited to, Cal. Civil Code Section 3291;
4. For an award of damages equal to the profit realized from Defendants conduct, as alleged.

D. On the Fourth Cause of Action

1. For general and compensatory damages pursuant to Cal. Civil Code Section 3333 and according to proof;
2. For consequential damages pursuant to Cal. Civil Code Section 3343;
3. For the interest provided by law including, but not limited to, Cal. Civil Code Section 3291;

- 1 4. For punitive damages pursuant to Cal. Civil Code
- 2 Section 3294(a) and for treble damages pursuant to
- 3 Cal. Civil Code Section 3345;
- 4 5. For an award of damages equal to the profit
- 5 realized from Defendants conduct, as alleged;
- 6 6. For Plaintiff's pain, suffering and emotional
- 7 distress as well as for sums incurred for services
- 8 of hospitals, physicians, nurses and other medical
- 9 supplies and services, if any;
- 10 7. For injunctive relief as provided by Cal. Civ.
- 11 Procedure Section 526;
- 12 8. For costs of suit and for such other and further
- 13 relief as the court deems proper.

14 E. On the Fifth Cause of Action

- 15 1. For general and compensatory damages pursuant to
- 16 Cal. Civil Code Section 3333 and according to
- 17 proof;
- 18 2. For consequential damages pursuant to Cal. Civil
- 19 Code Section 3343;
- 20 3. For the interest provided by law including, but not
- 21 limited to, Cal. Civil Code Section 3291;
- 22 4. For punitive damages pursuant to Cal. Civil Code
- 23 Section 3294(a) and for treble damages pursuant to
- 24 Cal. Civil Code Section 3345;
- 25 5. For an award of damages equal to the profit
- 26 realized from Defendants conduct, as alleged;
- 27 6. For Plaintiffs pain, suffering and emotional
- 28 distress as well as for sums incurred for services

of hospitals, physicians, nurses and other medical supplies and services, if any;

7. For costs of suit and for such other and further relief as the court deems proper.

F. On the Sixth Cause of Action

1. For general and compensatory damages pursuant to Cal. Civil Code Section 3333 and according to proof;

2. For consequential and lost profits damages in amount not less than \$1,000,000.00 and according to proof;

3. For the interest provided by law including, but not limited to, Cal. Civil Code Section 3291 and Corporations Code 16701(c);

4. For an award of damages equal to the profit realized from Defendants conduct, as alleged;

5. For preliminary and permanent injunctive relief enjoining and restraining Defendants, their assignees, delegatees and all persons acting in concert with Defendants and each of them from doing any act which would interfere or otherwise injure Plaintiff to his detriment with respect to his interests in the partnership business, as alleged;

6. For the imposition of a Constructive Trust over the partnership business and the income derived there from for the benefit of Plaintiff;

7. For an accounting and purchase of Plaintiffs partnership interest in accordance with the code.

8. For attorney fees under Cal. Corporations Code
Section 16701(i) and costs of suit and for such
other and further relief as the court deems proper.

G. On the Seventh Cause of Action

1. For general and compensatory damages pursuant to
Cal. Civil Code Section 3333 and according to
proof;
2. For consequential and lost profits damages in
amount not less than \$1,000,000.00 and according to
proof;
3. For the interest provided by law including, but not
limited to, Cal. Civil Code Section 3291 and
Corporations Code 16701(c);
4. For an award of damages equal to the profit
realized from Defendants conduct, as alleged;
5. For preliminary and permanent injunctive relief
enjoining and restraining Defendants, their
assignees, delegatees and all persons acting in
concert with Defendants and each of them from doing
any act which would interfere or otherwise injure
Plaintiff to his detriment with respect to his
interests in the partnership business, as alleged;
6. For the imposition of a Constructive Trust over the
partnership business and the income derived there
from for the benefit of Plaintiff;
7. For an accounting and purchase of Plaintiffs
partnership interest in accordance with the code.

8. For attorney fees under Cal. Corporations Code
Section 16701(i) and costs of suit and for such
other and further relief as the court deems proper.

H. On the Eighth Cause of Action

1. For general and compensatory damages pursuant to
Cal. Civil Code Section 3333 and according to
proof;
2. For consequential and lost profits damages in
amount not less than \$1,000,000.00 and according to
proof;
3. For the interest provided by law including, but not
limited to, Cal. Civil Code Section 3291 and
Corporations Code 16701(c);
4. For an award of damages equal to the profit
realized from Defendants conduct, as alleged;
5. For preliminary and permanent injunctive relief
enjoining and restraining Defendants, their
assignees, delegatees and all persons acting in
concert with Defendants and each of them from doing
any act which would interfere or otherwise injure
Plaintiff to his detriment with respect to his
interests in the partnership business, as alleged;
6. For the imposition of a Constructive Trust over the
partnership business and the income derived there
from for the benefit of Plaintiff;
7. For an accounting and purchase of Plaintiffs
partnership interest in accordance with the code.

8. For attorney fees under Cal. Corporations Code
Section 16701(i) and costs of suit and for such
other and further relief as the court deems proper.

I. On the Ninth Cause of Action

1. For general and compensatory damages pursuant to
Cal. Civil Code Section 3333 and according to
proof;
2. For consequential and lost profits damages in
amount not less than \$1,000,000.00 and according to
proof;
3. For the interest provided by law including, but not
limited to, Cal. Civil Code Section 3291 and
Corporations Code 16701(c);
4. For an award of damages equal to the profit
realized from Defendants conduct, as alleged;
5. For preliminary and permanent injunctive relief
enjoining and restraining Defendants, their
assignees, delegates and all persons acting in
concert with Defendants and each of them from doing
any act which would interfere or otherwise injure
Plaintiff to his detriment with respect to his
interests in the partnership business, as alleged;
6. For the imposition of a Constructive Trust over the
partnership business and the income derived there
from for the benefit of Plaintiff;
7. For an accounting and purchase of Plaintiffs
partnership interest in accordance with the code.

8. For attorney fees under Cal. Corporations Code
Section 16701(i) and costs of suit and for such
other and further relief as the court deems proper.

J. On the Tenth Cause of Action

1. For general and compensatory damages pursuant to
Cal. Civil Code Section 3300 and according to
proof;
2. For consequential and lost profits damages in
amount not less than \$1,000,000.00 and according to
proof;
3. For an award of damages equal to the profit
realized from Defendants conduct, as alleged;
4. For the interest provided by law including, but not
limited to, Cal. Civil Code Section 3289;
5. For Punitive damages pursuant to Civil Code
3344(a);
6. For immediate injunctive relief prohibiting the
Defendants, and each of them, from using or
otherwise exploiting Plaintiffs name, voice,
likeness or music in association with the Band, its
marketing, promotion and performances or any other
commercial activity;
7. For attorney fees pursuant to Civil Code 3344(a)
and costs of suit and for such other and further
relief as the court deems proper.

Dated: June 16, 2009

By: 

Mr. Douglas B. Wroan
For: The Wroan Law Firm, Inc.
Attorneys for Plaintiff

Flag this message

Wonderbread 5

Thursday, March 12, 2009 9:07 PM

From:

"Barry Simons" <barry@yourmusiclawyer.com>

View contact details

To:

"Patrick Gilles" <patrickgilles@yahoo.com>

Cc:

jeffreyafletcher@me.com, jmcidill@mac.com, tommy@tommyrickard.com, chip@wonderbread5.com, jay@jaysleganpresents.com

Dear Pat:

I have been asked to contact you on behalf of Jeffrey Fletcher, Thomas Rickard, Christopher Adams, and John McDill, the members of the musical group professionally known as the "Wonderbread 5" (hereinafter referred to as "Artist"). This email is in furtherance to the verbal communication between you and Christopher Adams on behalf of the band on Monday March 9th, 2009.

It is with great regret that the other members of Artist have decided unanimously that you shall no longer be a member. It has taken a long time to reach, and they are greatly saddened by this very difficult decision. They feel that notwithstanding considerable efforts by everyone to improve communications with you, including through professional mediation and other means, the relationship between you and the other members has been strained to the point that it has become irreconcilable.

Please be advised that Artist shall continue to perform and conduct business under the name "Wonderbread 5", that you shall relinquish all rights in the partnership business, and shall no longer be entitled to any and all future proceeds from Artist's live performance engagements and any other business activities.

Notwithstanding the foregoing, Artist will promptly forward to you a check in the amount of Five Thousand Dollars (\$5000) as a gesture of good faith, and as thanks for your hard work and dedication to the band. We hope this will help alleviate some financial distress which may result from your dismissal.

They request that you please refrain from attending their shows in order to provide for a smooth transition, and to avoid any conflict. They will agree to remove your name and likeness from Artist's website and any promotional materials as soon as possible (with the exception of their video, which was produced and owned by the band)

Lastly, the members of the band requested that I convey to you that they wish you the best in the future. They are willing to keep open, friendly lines of communication via e-mail, but that Jeffrey, Thomas, Christopher, John and Jay all be copied on any such communications.

This letter is without waiver or prejudice of any all rights at law or in equity, and all of such rights and remedies are hereby expressly reserved.

Thank you very much for your cooperation regarding this matter.

Barry Simons

Law Office of Barry Simons
1655 Polk St. Suite #2
San Francisco, CA 94109

ph: (415) 674-0900
fax: (415) 674-0911

barry@yourmusiclawyer.com
www.yourmusiclawyer.com

EXHIBIT C

C

Effective: January 1, 2006

West's Annotated California Codes Currentness

Code of Civil Procedure (Refs & Annos)

Part 2. Of Civil Actions (Refs & Annos)

☞ Title 14. Miscellaneous Provisions

☞ Chapter 3. Offers by a Party to Compromise (Refs & Annos)

→ § 998. Withholding or augmenting costs following rejection or acceptance of offer to allow judgment

(a) The costs allowed under Sections 1031 and 1032 shall be withheld or augmented as provided in this section.

(b) Not less than 10 days prior to commencement of trial or arbitration (as provided in Section 1281 or 1295) of a dispute to be resolved by arbitration, any party may serve an offer in writing upon any other party to the action to allow judgment to be taken or an award to be entered in accordance with the terms and conditions stated at that time. The written offer shall include a statement of the offer, containing the terms and conditions of the judgment or award, and a provision that allows the accepting party to indicate acceptance of the offer by signing a statement that the offer is accepted. Any acceptance of the offer, whether made on the document containing the offer or on a separate document of acceptance, shall be in writing and shall be signed by counsel for the accepting party or, if not represented by counsel, by the accepting party.

(1) If the offer is accepted, the offer with proof of acceptance shall be filed and the clerk or the judge shall enter judgment accordingly. In the case of an arbitration, the offer with proof of acceptance shall be filed with the arbitrator or arbitrators who shall promptly render an award accordingly.

(2) If the offer is not accepted prior to trial or arbitration or within 30 days after it is made, whichever occurs first, it shall be deemed withdrawn, and cannot be given in evidence upon the trial or arbitration.

(3) For purposes of this subdivision, a trial or arbitration shall be deemed to be actually commenced at the beginning of the opening statement of the plaintiff or counsel, and if there is no opening statement, then at the time of the administering of the oath or affirmation to the first witness, or the introduction of any evidence.

(c)(1) If an offer made by a defendant is not accepted and the plaintiff fails to obtain a more favorable judgment or award, the plaintiff shall not recover his or her postoffer costs and shall pay the defendant's costs from the time of the offer. In addition, in any action or proceeding other than an eminent domain action, the court or arbitrator, in its discretion, may require the plaintiff to pay a reasonable sum to cover costs of the services of expert witnesses, who are not regular employees of any party, actually incurred and reasonably necessary in either, or both, preparation for trial or arbitration, or during trial or arbitration, of the case by the defendant.

(2)(A) In determining whether the plaintiff obtains a more favorable judgment, the court or arbitrator shall exclude the postoffer costs.

(B) It is the intent of the Legislature in enacting subparagraph (A) to supersede the holding in *Encinitas Plaza Real v. Knight*, 209 Cal.App.3d 996, that attorney's fees awarded to the prevailing party were not costs for purposes of this section but were part of the judgment.

(d) If an offer made by a plaintiff is not accepted and the defendant fails to obtain a more favorable judgment or award in any action or proceeding other than an eminent domain action, the court or arbitrator, in its discretion, may require the defendant to pay a reasonable sum to cover postoffer costs of the services of expert witnesses, who are not regular employees of any party, actually incurred and reasonably necessary in either, or both, preparation for trial or arbitration, or during trial or arbitration, of the case by the plaintiff, in addition to plaintiff's costs.

(e) If an offer made by a defendant is not accepted and the plaintiff fails to obtain a more favorable judgment or award, the costs under this section, from the time of the offer, shall be deducted from any damages awarded in favor of the plaintiff. If the costs awarded under this section exceed the amount of the damages awarded to the plaintiff the net amount shall be awarded to the defendant and judgment or award shall be entered accordingly.

(f) Police officers shall be deemed to be expert witnesses for the purposes of this section. For purposes of this section, "plaintiff" includes a cross-complainant and "defendant" includes a cross-defendant. Any judgment or award entered pursuant to this section shall be deemed to be a compromise settlement.

(g) This chapter does not apply to either of the following:

(1) An offer that is made by a plaintiff in an eminent domain action.

(2) Any enforcement action brought in the name of the people of the State of California by the Attorney General, a district attorney, or a city attorney, acting as a public prosecutor.

(h) The costs for services of expert witnesses for trial under subdivisions (c) and (d) shall not exceed those specified in Section 68092.5 of the Government Code.

(i) This section shall not apply to labor arbitrations filed pursuant to memoranda of understanding under the Ralph C. Dills Act (Chapter 10.3 (commencing with Section 3512) of Division 4 of Title 1 of the Government Code).

CREDIT(S)

(Added by Stats.1971, c. 1679, p. 3605, § 3. Amended by Stats.1977, c. 458, p. 1513, § 1; Stats.1986, c. 540, § 14; Stats.1987, c. 1080, § 8; Stats.1994, c. 332 (S.B.1324), § 1; Stats.1997, c. 892 (S.B.73), § 1; Stats.1999, c. 353 (S.B.1161), § 1; Stats.2001, c. 153 (A.B.732), § 1; Stats.2005, c. 706 (A.B.1742), § 13.)

APPLICATION

<For application of 2005 amendment, see Stats.2005, c. 706 (A.B.1742), § 41.>

Current with all laws through c. 652 of the 2009 portion of the 2009-2010 Reg.Sess., the end of the 2009-2010 1st, 2nd and 4th Ex.Sess., urgency legislation through c. 31 of the 2009-2010 3rd Ex.Sess., and c. 5 of the 7th Ex.Sess., Gov.'s Reorg. Plan No. 1 of 2009, Prop. 1F, approved at the 5/19/2009 election, and propositions on the 6/8/2010 ballot received as of 12/1/2009

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END OF DOCUMENT

EXHIBIT D

PHILLIPS, ERLEWINE & GIVEN LLP

ATTORNEYS AT LAW
50 CALIFORNIA STREET 35TH FLOOR
SAN FRANCISCO, CALIFORNIA 94111
TELEPHONE (415) 398-0900
FAX (415) 398-0911
WWW.PHILLAW.COM

DAVID M. GIVEN
dmg@phillaw.com

September 15, 2009

Douglas B. Wroan, Esq.
The Wroan Law Firm, Inc.
5155 West Rosecrans Avenue, Suite 229
Los Angeles, CA 90250

Re: Gilles v. Wonderbread 5, et al.
S.F. Superior Court Case No. CGC-09-489573

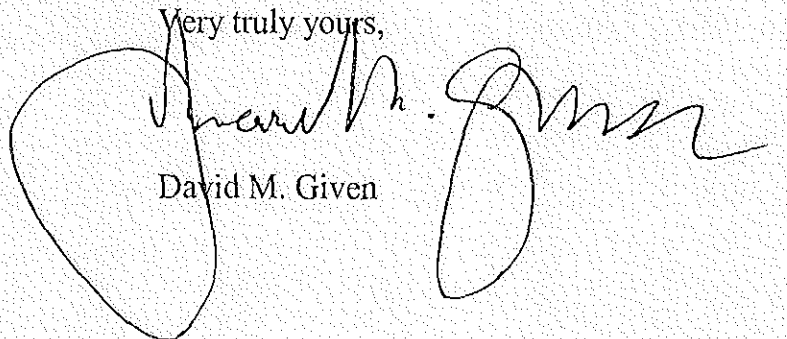
Dear Mr. Wroan:

I understand our clients' Offer of Compromise has reached you.

To the extent Corporations Code § 16701 applies to this case, this letter shall serve as the band's offer to pay for your client's "interest" in the band. The band is ready, willing and able to pay this amount forthwith, in settlement of all your client's claims and subject to dismissal of your client's legal action with prejudice.

Our August 25th letter together with the enclosed serves as an explanation of how the amount contained in the Offer of Compromise was reached. As previously discussed, the band has no assets or (known) liabilities (and therefore no liquidation value), and no balance sheet or income statement is available. Notwithstanding the enclosed, the band disputes it owes your client anything and reserves all rights on this subject, including without limitation on any damages incurred by it as a result of your client's actions.

Very truly yours,



David M. Given

DMG:hs
Encl.

GILLES v. WONDERBREAD 5
S.F. Superior Court Case No. CGC-09-489573

C.C.P. §998 Offer of Compromise

Data:

Gilles Annual WB5 Gross Income
(per 1099s – rounded to nearest dollar)

2004 - \$51,754
2005 - \$57,755
2006 - \$68,787
2007 - \$56,904
2008 - \$59,308

Average = \$58,902

Assumptions:

Multiplier = 1

Replacement Allocation Reduction = 1/3

Value of Share before Setoffs = \$38,875

Setoffs:

Severance Payment Received = (\$5,000)

Pro Rata Share of Transaction Costs to Band = (\$4,000 est.)

Damages to Band Caused by Gilles = TBD

Total Est. Value:

Rounded to \$30,000

-END-

EXHIBIT E

1 David M. Given (State Bar No. 142375)
2 Feather D. Baron (State Bar No. 252489)
3 PHILLIPS, ERLEWINE & GIVEN LLP
4 50 California Street, 35th Floor
5 San Francisco, California 94111
6 Telephone: (415) 398-0900
7 Facsimile: (415) 398-0911
8 dmg@phillaw.com
9 fdb@phillaw.com

10 Attorneys for Defendants

PHILLIPS, ERLEWINE & GIVEN LLP
RECEIVED

OCT - 8 2009

☒ DOP
☒ RUE
☒ DMG
☒ MAC
☒ VMB
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☒ FILE
☒ CALENDAR
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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

11 PATRICK GILLES, an individual, on behalf
12 of himself,

13 Plaintiff,

14 v.

15 JEFFREY FLETCHER, an individual; JOHN
16 MCDILL, an individual; THOMAS
17 RICKARD, an individual; CHRISTOPHER
18 ADAMS, an individual; MICHAEL
19 TAYLOR, an individual; JAY SIEGAN, an
20 individual; JAY SIEGAN PRESENTS, an
21 unknown business entity; and
22 WONDERBREAD 5, a California general
23 partnership; and DOES 1-10, inclusive,

24 Defendants.

CASE NO. CGC-09-489573

**DEFENDANTS' OFFER TO
COMPROMISE**
[CCP § 998]

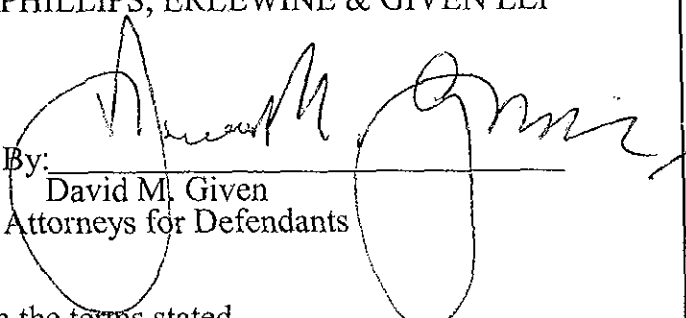
25 Pursuant to Code of Civil Procedure § 998, defendants JEFFREY FLETCHER,
26 JOHN MCDILL, THOMAS RICKARD, CHRISTOPHER ADAMS, MICHAEL
27 TAYLOR, JAY SIEGAN, JAY SIEGAN PRESENTS and WONDERBREAD 5
28 (collectively, "defendants"), jointly offer to compromise this dispute for payment to
plaintiff in the total sum of THIRTY THOUSAND DOLLARS (\$30,000.01) and ONE
CENT, inclusive of reasonable attorney's fees and costs incurred to the date of this offer,

1 and otherwise in satisfaction of all claims for damages, costs, expenses, attorney's fees
2 and interest in this action.

3 Plaintiff may indicate acceptance of this offer by signing, or having his attorney
4 sign, the statement to that effect set forth below or by signing a separate statement that the
5 offer is accepted.

6
7 DATED: September 3, 2009

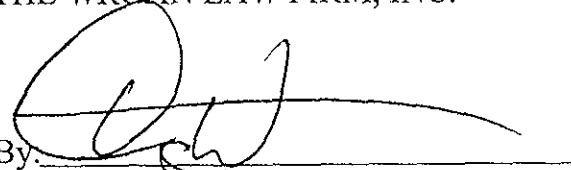
PHILLIPS, ERLEWINE & GIVEN LLP

8
9
10 By: 
11 David M. Given
Attorneys for Defendants

12 Plaintiff accepts the above offer on the terms stated.

13 DATED: 10/1, 2009

THE WROAN LAW FIRM, INC.

14
15
16 By: 
17 Douglas B. Wroan
Attorneys for Plaintiff
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I work in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action; my business address is 5155 West Rosecrans Avenue, Suite 229, Hawthorne, California 90250.

On October 1, 2009, I served the within document described as: **PLAINTIFF'S ACCEPTANCE OF DEFENDANT'S OFFER TO COMPROMISE [CCP §998]** on the interested parties in this action, by placing XX a true copy thereof / the original thereof enclosed in a sealed enveloped addressed as follows:

David M. Given
Feather D. Baron
PHILLIPS, ERLEWINE & GIVEN LLP
50 California Street, 35th Floor
San Francisco, CA 94111

XXX **BY MAIL:** I am readily familiar with the firm's practice of collecting and processing correspondence for mailing with the United States Postal Service and that the documents are deposited with the United States Postal Service the same day as the day of the collection in the ordinary course of business. The sealed envelope and postage fully prepared was placed for collection and mailing on the above date following ordinary business practices.

 BY FAX TRANSMISSION: I faxed a copy of the document(s) to the persons at the fax numbers listed in the Service List. The telephone number of the sending facsimile machine was (415) 398-0911. No error was reported by the facsimile machine that I used.

 BY OVERNIGHT DELIVERY (FED EX/UPS/DHL): I enclosed said documents(s) in an envelope or package provided by (name of carrier) and addressed it to the persons at the addresses listed in the Service List. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of or delivered such document(s) to a courier or driver authorized by to receive document(s).

 BY PERSONAL DELIVERY: I caused such envelopes/document(s) to be delivered by hand in person to the office of the addresses listed in the Service List.

 (FEDERAL ONLY): I declare that I am employed in the office as a member of the bar of this court at whose direction the service was made.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on October 1, 2009, at Hawthorne, California.



Douglas Wroan

EXHIBIT F

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): DOUGLAS B. WROAN (SBN 177051) THE WROAN LAW FIRM, INC. 5155 West Rosecrans Avenue, Suite 229 HAWTHORNE, CA 90250 TELEPHONE NO.: (310) 973-4291 FAX NO. (Optional): (310) 973-4287 E-MAIL ADDRESS (Optional): DWROAN@Wroanlawfirm.com ATTORNEY FOR (Name): Plaintiff, Patrick Gilles		FOR COURT USE ONLY ENDORSED FILED OCT 9 2 2009 GORDON PARKILL, Clerk BY: MICHAEL RAYRAY Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO STREET ADDRESS: 400 McAllister Street MAILING ADDRESS: CITY AND ZIP CODE: San Francisco, CA 94102 BRANCH NAME: Civic Center Courthouse		
PLAINTIFF/PETITIONER: Patrick Gilles DEFENDANT/RESPONDENT: Jeffrey Fletcher et. al.		
REQUEST FOR DISMISSAL <input type="checkbox"/> Personal Injury, Property Damage, or Wrongful Death <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other <input type="checkbox"/> Family Law <input type="checkbox"/> Eminent Domain <input checked="" type="checkbox"/> Other (specify): Fraud, Breach of Contract		CASE NUMBER: CGC-09-489573
- A conformed copy will not be returned by the clerk unless a method of return is provided with the document. -		

1. TO THE CLERK: Please dismiss this action as follows:
- a. (1) ☒ With prejudice (2) ☐ Without prejudice
- b. (1) ☒ Complaint (2) ☐ Petition
 (3) ☐ Cross-complaint filed by (name):
 (4) ☐ Cross-complaint filed by (name):
 (5) ☐ Entire action of all parties and all causes of action
 (6) ☐ Other (specify):*

on (date):

on (date):

2. (Complete in all cases except family law cases.)

☐ Court fees and costs were waived for a party in this case. (This information may be obtained from the clerk. If this box is checked, the declaration on the back of this form must be completed).

Date: October 20, 2009

DOUGLAS B. WROAN

(TYPE OR PRINT NAME OF ☒ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

*If dismissal requested is of specified parties only of specified causes of action only, or of specified cross-complaints only, so state and identify the parties, causes of action, or cross-complaints to be dismissed.

Attorney or party without attorney for:

☒ Plaintiff/Petitioner ☐ Defendant/Respondent
☐ Cross-Complainant

3. TO THE CLERK: Consent to the above dismissal is hereby given.**

Date:

(TYPE OR PRINT NAME OF ☐ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

** If a cross-complaint - or Response (Family Law) seeking affirmative relief - is on file, the attorney for cross-complainant (respondent) must sign this consent if required by Code of Civil Procedure section 581 (f) or (g).

Attorney or party without attorney for:

☐ Plaintiff/Petitioner ☐ Defendant/Respondent
☐ Cross-Complainant

(To be completed by clerk)

4. ☐ Dismissal entered as requested on (date): OCT 22 2009
 5. ☐ Dismissal entered on (date): as to only (name):
 6. ☐ Dismissal not entered as requested for the following reasons (specify):

7. a. ☐ Attorney or party without attorney notified on (date):
 b. ☐ Attorney or party without attorney not notified. Filing party failed to provide
☐ a copy to be conformed ☐ means to return conformed copy

Date: OCT 22 2009

Clerk, by: MICHAEL RAYRAY

Deputy

Page 1 of 2

REQUEST FOR DISMISSAL

VIA FAX COPY

EXHIBIT G

THE WONDERBREAD 5®

225:K₂H₂O

HOME PAGE



Powerbook
WebSite
TODAY

GoDaddy